

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
(Small Business Administration),

Plaintiff

v.

JOHN DOE AND RICHARD ROE, as those
unknown persons who may be the
holders of the lost mortgage note
of have any interest in this
proceeding,

Defendants

CIVIL NO. 07-1699 (JP)

FINAL JUDGMENT BY DEFAULT

The Court has before it Plaintiff United States of America's ("USA") motion for judgment by default (**No. 6**). The motion is **GRANTED**.

I. FINDINGS OF FACT

On or before December 18, 1993 and March 6, 2001, Pet Shot Boys, Inc. ("Pet Shop Boys"), received from Plaintiff United States of America, acting through the Small Business Administration, two loans in the amounts of \$161,000.00 and \$121,000.00 on the property described herein below.

In evidence of the money lent by Plaintiff USA, Pet Shop Boys executed in favor of Plaintiff a promissory note dated December 18, 1998, in the amount of \$161,000.00 at half percent of one percent over the prime interest rate, payable to "Corporación para el Fomento

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Económico de la Ciudad Capital," and guaranteed by the United States Small Business Administration.

To secure the payment of the first loan, Pet Shop Boys executed a First Mortgage in favor of Plaintiff on December 18, 1998, by First Mortgage Deed No. 24 before Notary Public Miguel Ricardo Garay-Aubán.

In evidence of the money lent by the Plaintiff, Pet Shop Boys executed in favor of the Plaintiff a promissory note dated March 6, 2001, in the amount of \$121,000.00 with variable interest, payable to "Corporación para el Fomento Económico de la Ciudad Capital," guaranteed by the United States Small Business Administration.

To secure the payment of said second loan, Pet Shop Boys executed a Second Mortgage in favor of the Plaintiff, on March 6, 2001, by Mortgage Deed No. 8, before Notary Public Carmen Cardona-Rodríguez.

Both of the above-described mortgages were made over the following property, described in the Spanish language as:

URBANA: Solar sito en el sitio BAYOLA de la Sección Norte del Barrio de Santurce del Municipio de San Juan, Puerto Rico, en forma de cuadrilátero irregular con un área de 328.00 metros cuadrados y teniendo como colindancia por el Oeste, que es su frente en 14.03 metros, con la Avenida De Diego; por el lado izquierdo entrando que es el Norte en 25.24 metros, con terrenos de Harry Denton y de J.R. Villanueva; por el fondo que es el Este, en 11.85 metros, con terrenos de la Sucesión de Domingo A. Crescioni; y por el lado derecho entrando que es el Sur, en 29.20 metros, con terrenos de Rodolfo F. Aponte y de la Sucesión de Arturo González. Enclava una casa.

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The aforementioned First Mortgage Deed in the amount of \$161,000.00 executed in favor of Plaintiff USA is duly recorded in the Registry of Property of San Juan, Section I at pages 104rs, volume 533 of Santurce Norte, property number 19254, 4th inscription, where said mortgage appears in full force and effect.

The aforementioned Second Mortgage Deed in the amount of \$121,000.00 executed in favor of Plaintiff USA is duly recorded in the Registry of Property of San Juan, Section I at pages 104rs, volume 533 of Santurce Norte, property number 19254, 4th inscription, where said mortgage appears in full force and effect.

According to information received from the Small Business Administration, the original promissory notes of \$161,000.00 and \$121,000.00, dated December 18, 1998, and March 6, 2001, respectively, while in possession of and under the custody of said agency, were apparently lost, misplaced or destroyed and although a thorough search has been made, it has been unable to find or locate said notes.

The indebtedness assumed by Pet Shop Boys to Plaintiff USA has been paid in full.

II. ANALYSIS

Under Articles 132 and 134 of the Mortgage and Property Act, Law 198 of 1979 as amended (30 L.P.R.A. Sections 2456 and 2458), and 28 U.S.C. section 1655, when a mortgage note has been lost as alleged above, the mortgage may be canceled of record by the Registrar of

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Property only by judicial decree obtained by a court of competent jurisdiction in a civil proceeding such as authorized by the Code of Civil Procedure of Puerto Rico, in which the court decrees that the mortgage obligation is extinguished. The Court is informed by Plaintiff that the indebtedness assumed by Pet Shop Boys has been paid in full.

Defendants were duly served by publication pursuant to the Court's Order (No. 3). Notice was published in the newspaper "El Nuevo Día" on September 5, 12, 19, and 26, of 2007, and on October 3 and 10, 2007, as per verified statement filed with the Clerk of this Court pursuant to Rule 4 of the Rules of Civil Procedure of Puerto Rico, as required by Article 82 of the Mortgage Law (30 L.P.R.A. 156) and 28 U.S.C. Section 1655. Despite service by publication, none of the Defendants have answered the Complaint. The Clerk of the Court entered default on December 13, 2007 (No. 7).

The Court hereby **ORDERS:**

- (1) That Judgment be entered against Defendants herein declaring that the aforementioned mortgage obligation is extinguished.
- (2) That the promissory notes in the amounts of \$161,000.00 and \$121,000.00, of principal on the unpaid balance executed by Pet Shop Boys on December 18, 1998 and March 6, 2001, in the possession of whomsoever they may now be or become in

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the future, be hereby declared null and void, and therefore canceled.

- (3) That the Registrar of Property of San Juan I, Puerto Rico, cancel and nullify the real estate voluntary mortgages executed by Pet Shop Boys to secure the payment of the promissory notes above described and referred to in paragraphs 4 and 6 of the Complaint, constituted by the terms of Voluntary Mortgage Deeds No. 24 and 8 executed before Notary Publics Ricardo Garay-Aubán and Carmen Cardona-Rodríguez, and which were recorded in the Registry of Property of San Juan I, Puerto Rico, at page 104rs, volume 533 of Santurce Norte, Puerto Rico, property number 19254 for the first mortgage of \$161,000.00 and page movil folio 110 of Santurce Norte,¹ property number 19254 for the second mortgage of \$121,000.00.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 19th day of December, 2007.

s/Jaime Pieras, Jr.
JAIME PIERAS, JR.
U.S. SENIOR DISTRICT JUDGE

1. The Court notes a discrepancy in the page description as provided by Plaintiff USA for the recording location of the second mortgage.